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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Albania, Australia,* Germany, Greece,* Latvia, Montenegro, Poland,* Romania,* Sri Lanka,* the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America: draft resolution

30/... Promoting reconciliation, accountability and human rights in Sri Lanka

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations,

Guided by the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments,

Recalling Human Rights Council resolutions 19/2 of 22 March 2012, 22/1 of 21 March 2013 and 25/1 of 27 March 2014 on promoting reconciliation and accountability in Sri Lanka,

Reaffirming its commitment to the sovereignty, independence, unity and territorial integrity of Sri Lanka,

Reaffirming also that it is the responsibility of each State to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population,

Welcoming the historic free and fair democratic elections in January and August 2015 and the peaceful political transition in Sri Lanka,

Noting with interest the passage and operationalization of the nineteenth amendment to the Constitution of Sri Lanka and its contribution to the promotion of democratic governance and independent oversight of key institutions, including the provision on the promotion of national reconciliation and integration as among the constitutional duties of the President of Sri Lanka,

* Non-member State of the Human Rights Council.

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Welcoming the steps taken by the Government of Sri Lanka since January 2015 to advance respect for human rights and to strengthen good governance and democratic institutions,

Welcoming also the efforts of the Government of Sri Lanka to investigate allegations of bribery, corruption, fraud and abuse of power, and stressing the importance of such investigations and the prosecution of those responsible in ending impunity and promoting good governance,

Welcoming further the steps taken to strengthen civilian administration in the former conflict-affected provinces of the North and East, and acknowledging the progress made by the Government of Sri Lanka in rebuilding infrastructure, demining and resettling internally displaced persons, and calling upon the international community, including the United Nations, to assist the Government of Sri Lanka in furthering these efforts, especially in expediting the process of delivering durable solutions for all internally displaced persons,

Recognizing the improved environment for members of civil society and human rights defenders in Sri Lanka while expressing concern at reports of ongoing violations and abuses of human rights, and recognizing the expressed commitment of the Government of Sri Lanka to address issues, including those involving sexual and gender-based violence and torture, abductions, as well as intimidation of and threats against human rights defenders and members of civil society,

Reaffirming that all Sri Lankans are entitled to the full enjoyment of their human rights regardless of religion, belief or ethnicity, in a peaceful and unified land,

Reaffirming also that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, international refugee law and international humanitarian law, as applicable,

Welcoming the Declaration of Peace of the Government of 4 February 2015 and its acknowledgement of the loss of life and victims of violence of all ethnicities and religions,

Emphasizing the importance of a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures, including , inter alia, individual prosecutions, reparations, truth-seeking, institutional reform, the vetting of public employees and officials, or an appropriately conceived combination thereof, in order to, inter alia, ensure accountability, serve justice, provide victims with remedies, promote healing and reconciliation, establish independent oversight of the security system, restore confidence in the institutions of the State and promote the rule of law in accordance with international human rights law with a view to preventing the recurrence of violations and abuses, and welcoming in this regard the expressed commitment of the Government to ensure dialogue and wide consultations with all stakeholders,

Recognizing that mechanisms to redress past abuses and violations work best when they are independent, impartial and transparent; are led by individuals known for displaying the highest degree of professionalism, integrity and impartiality; utilize consultative and participatory methods that include the views from all relevant stakeholders, including, but not limited to, victims, women, youth, representatives of various religions, ethnicities and geographic locations, as well as marginalized groups; and designed and implemented based on expert advice from those with relevant international and domestic experience,

Recognizing also that a credible accountability process for those most responsible for violations and abuses will safeguard the reputation of those, including within the military, who conducted themselves in an appropriate manner with honour and professionalism,

Recalling the responsibility of States to comply with their relevant obligations to prosecute those responsible for gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity,

Taking note of the review of the high-security zones undertaken by the Government, and welcoming the initial steps taken to return land to its rightful civilian owners and to help local populations to resume livelihoods and to restore normality to civilian life,

Welcoming the commitments of the Government of Sri Lanka to the devolution of political authority,

Requesting the Government of Sri Lanka to implement effectively the constructive recommendations made in the report of the Lessons Learnt and Reconciliation Commission,

Welcoming the visit from 30 March to 3 April 2015 by and the observations of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, and the planned visit of the Working Group on Enforced or Involuntary Disappearances in November 2015,

Recognizing that the investigation into alleged serious violations and abuses of human rights and related crimes in Sri Lanka requested by the Human Rights Council in its resolution 25/1 was necessitated by the absence of a credible national process of accountability,

1. *Takes note with appreciation* of the oral update presented by the United Nations High Commissioner to the Human Rights Council at its twenty-seventh session, the report of the Office of the High Commissioner on promoting reconciliation and accountability in Sri Lanka[1] and its investigation on Sri Lanka requested by the Human Rights Council in its resolution 25/1,[2] including its findings and conclusions, and encourages the Government of Sri Lanka to implement the recommendations contained therein when implementing measures for truth-seeking, justice, reparations and guarantees of non-recurrence;

2. *Welcomes* the positive engagement between the Government of Sri Lanka and the High Commissioner and the Office of the High Commissioner since January 2015, and encourages the continuation of that engagement in the promotion and protection of human rights and in exploring appropriate forms of international support for and participation in Sri Lankan processes for seeking truth and justice;

3. *Supports* the commitment of the Government of Sri Lanka to strengthen and safeguard the credibility of the processes of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national consultations with the inclusion of victims and civil society, including non-governmental organizations, from all affected communities, which will inform the design and implementation of these processes, drawing on international expertise, assistance and best practices;

4. *Welcomes* the commitment of the Government of Sri Lanka to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures; also welcomes in this regard the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons and an office for reparations; further welcomes the willingness of the

[1] A/HRC/30/61.

[2] See A/HRC/30/CRP.2.

Government to give each mechanism the freedom to obtain financial, material and technical assistance from international partners, including the Office of the High Commissioner; and affirms that these commitments, if implemented fully and credibly, will help to advance accountability for serious crimes by all sides and to achieve reconciliation;

5. *Recognizes* the need for a process of accountability and reconciliation for the violations and abuses committed by the Liberation Tigers of Tamil Eelam, as highlighted in the report of the Office of the High Commissioner for Human Rights investigation on Sri Lanka;[2]

6. *Welcomes* the recognition by the Government of Sri Lanka that accountability is essential to uphold the rule of law and to build confidence in the people of all communities of Sri Lanka in the justice system, notes with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators;

7. *Encourages* the Government of Sri Lanka to reform its domestic law to ensure that it can implement effectively its own commitments, the recommendations made in the report of the Lessons Learnt and Reconciliation Commission, as well as the recommendations of the report of the Office of the High Commissioner,[1] including by allowing for, in a manner consistent with its international obligations, the trial and punishment of those most responsible for the full range of crimes under the general principles of law recognized by the community of nations relevant to violations and abuses of human rights and violations of international humanitarian law, including during the period covered by the Lessons Learnt and Reconciliation Commission;

8. *Also encourages* the Government of Sri Lanka to introduce effective security sector reforms as part of its transitional justice process, which will help to enhance the reputation and professionalism of the military and include ensuring that no scope exists for retention in or recruitment into the security forces of anyone credibly implicated through a fair administrative process in serious crimes involving human rights violations or abuses or violations of international humanitarian law, including members of the security and intelligence units; and also to increase training and incentives focused on the promotion and protection of human rights of all Sri Lankans;

9. *Welcomes* the recent passage by the Government of Sri Lanka of an updated witness and victim protection law and its commitment to review the law, and encourages the Government to strengthen these essential protections by making specific accommodations to protect effectively witnesses and victims, investigators, prosecutors and judges;

10. *Also welcomes* the initial steps taken to return land, and encourages the Government of Sri Lanka to accelerate the return of land to its rightful civilian owners, and to undertake further efforts to tackle the considerable work that lies ahead in the areas of land use and ownership, in particular the ending of military involvement in civilian activities, the resumption of livelihoods and the restoration of normality to civilian life, and stresses the importance of the full participation of local populations, including representatives of civil society and minorities, in these efforts;

11. *Encourages* the Government of Sri Lanka to investigate all alleged attacks by individuals and groups on journalists, human rights defenders, members of religious

minority groups and other members of civil society, as well as places of worship, and to hold perpetrators of such attacks to account and to take steps to prevent such attacks in the future;

12. *Welcomes* the commitment of the Government of Sri Lanka to review the Public Security Ordinance Act and to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international best practices;

13. *Also welcomes* the commitment of the Government of Sri Lanka to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance without delay, to criminalize enforced disappearances and to begin to issue certificates of absence to the families of missing persons as a temporary measure of relief;

14. *Further welcomes* the commitment of the Government of Sri Lanka to release publicly previous presidential commission reports;

15. *Encourages* the Government of Sri Lanka to develop a comprehensive plan and mechanism for preserving all existing records and documentation relating to human rights violations and abuses and violations of international humanitarian law, whether held by public or private institutions;

16. *Welcomes* the commitment of the Government of Sri Lanka to a political settlement by taking the necessary constitutional measures, encourages the Government's efforts to fulfil its commitments on the devolution of political authority, which is integral to reconciliation and the full enjoyment of human rights by all members of its population; and also encourages the Government to ensure that all Provincial Councils are able to operate effectively, in accordance with the thirteenth amendment to the Constitution of Sri Lanka;

17. *Also welcomes* the commitment of the Government of Sri Lanka to issue instructions clearly to all branches of the security forces that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished, and encourages the Government to address all reports of sexual and gender-based violence and torture;

18. *Requests* the Office of the High Commissioner to continue to assess progress on the implementation of its recommendations and other relevant processes related to reconciliation, accountability and human rights, and to present an oral update to the Human Rights Council at its thirty-second session, and a comprehensive report followed by discussion on the implementation of the present resolution at its thirty-fourth session;

19. *Encourages* the Government of Sri Lanka to continue to cooperate with special procedure mandate holders, including by responding formally to outstanding requests;

20. *Encourages* the Office of the High Commissioner and relevant special procedure mandate holders to provide, in consultation with and with the concurrence of the Government of Sri Lanka, advice and technical assistance on implementing the above-mentioned steps.